

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

JUN 7 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Policies and Rules Concerning)
Children's Television Programming)
)
Revision of Programming Policies)
for Television Broadcast Stations)

MM Docket No. 93-48

**REPLY COMMENTS
OF THE
ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.**

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**REPLY COMMENTS OF THE
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The Association of Independent Television Stations, Inc. ("INTV"), hereby submits its reply comments in response to the Commission's *Notice of Inquiry*, MM Docket No. 93-48, FCC 93-123 (released March 2, 1993) [hereinafter cited as *Notice*].

I. DEFINITION OF PROGRAMMING RESPONSIVE TO THE EDUCATIONAL AND INFORMATIONAL NEEDS OF CHILDREN.

The Commission should resist adding additional gloss to its current definition of programming responsive to the educational and informational needs of children. No reason exists for such action; every reason exists to exercise restraint.

The hue and cry over the misclassification of some programs by some stations sheds only heat where light is called for.¹ Misapplication of a definition is no basis for changing a definition. The proper remedy is proper application, which may be engendered (as if it had not been already) by so small a gesture as a raised eyebrow. Nonetheless, some commenters advance a number of refinements and additions to the definition of programming responsive to the educational and informational needs of children.² Beyond adding another layer of confusion, such proposals ultimately would be counterproductive.

The basic thrust of these proposals is to narrow the definition to the point that only purely educational material untainted by any conscious effort to entertain would fall within the definition. As initially proposed by the Commission, the definition would encompass only programming the primary objective of which was to educate or inform. Entertainment value would be a discounted, secondary consideration. This would be accomplished by adding a further qualification to the existing definition, namely that the primary objective of the program be educational and that it be explicitly so.³ This approach has drawn some support among commenting parties.

Such an additional "qualification" on the definition only would compound the possibility of confusion. In the case of an independent station

¹See, e.g., Comments of the Center for Media Education, Peggy Charren, *et al.*, MM Docket No. 93-48 (filed May 7, 1993) at 10 [hereinafter cited as "CME"].

²*Id.*; See also, e.g., Comments of the South Florida Preschool PTA, MM Docket No. 93-48 (filed May 7, 1993) at 7 [hereinafter cited as "SFP"]; Comments of The Center for Research on the Effects of Television, MM Docket No. 93-48 (filed May 7, 1993).

evaluating a program, for example, not only would a judgment have to be made that the program was "specifically designed" to serve the educational and informational needs of children, but also divine whether its primary purpose was educational, and, if so, whether it was sufficiently explicitly so to be

excluded under the Commission's definition 4. If a program was found to be

novo determinations under a new definition which arguably might exclude programs considered worthy by Congress? Thus, an additional layer of definitional elements would be far more conducive to confusion than the present definition.

Moreover, assuming *arguendo* the definitional quagmire could be sidestepped, the adoption of a definition which demanded the predominance of educational over entertainment value would be self-defeating. Faced with such a definition, broadcast stations would tend to err on the side of the bland, educational fare, rather than risk being second-guessed about a program that might be perceived in the wrong quarters as just a bit more entertaining than educational. As so well stated in the Comments of Act III Broadcasting, Inc. (at 6):

It is difficult to understand why a program cannot be both educational and informational as well as entertaining. The reality is that children are unlikely to watch educational and informational programming unless the program's educational and informational aspects are flavored with a degree of entertainment. Yet under the Commissions' apparent view, such a program would pose too much of a risk of being unacceptable to satisfy the licensee's programming obligations for a broadcaster to air it. Thus, a program with substantial educational value will have been lost.

Thus, development of quality children's programming which educates and informs in an entertaining manner would be stifled and its broadcast chilled.

Furthermore, even if stations did broadcast such programming, few children would watch it. In criticizing the education/entertainment dichotomy as "false," The Children's Television Workshop notes:

Self-evidently, programming will not educate if it is not watched; to be watched, it must engage the child viewer, whether by means of "entertaining" him or her (for example,

through comedy), or by otherwise compelling the child's attention (for example, by means of a drama that convincingly addresses the child's own fears or dilemmas, or an adventure in which the child can imagine herself or himself the hero).⁶

As the Center for Media Education *et al.* posit, the Children's Television Act of 1990, 47 U.S.C. §§ 303a, 303b, & 394, "was intended to encourage creation of quality educational programs."⁷ Quality, however, rarely is created in an environment confined by rigid definitions. As observed by another pre-eminent producer of children's programming:

Disney is convinced, however, that children will watch educational programming if it is high quality and engaging in an entertaining manner. Disney is committed, therefore, to producing television programs that meet the educational and informational needs of children. But we will not compromise Disney's longstanding emphasis on quality programming that will attract and hold their attention, by entertaining as well as educating them. In short, we will not spend our time and resources to produce programs that children will not watch.⁸

As Mickey's progenitor further explains:

The government can force children to go to school, but it cannot force children to watch television programs. Children have proven themselves to be sophisticated consumers with an uncanny ability to get what they want. (Just ask any parent.) They are also technologically sophisticated to the point of surpassing many of their parents when it comes to the high-tech world of computers, VCRs and the like. Children are experts at using the remote control -- and they will use it to exercise their television

⁶Comments of Children's Television Workshop, MM Docket No. 93-48 (filed May 7, 1993) at 6-7 [hereinafter cited as "CTW"]. The inclusion of action adventure and drama within the definition of entertainment hardly appears arbitrary.

⁷CME at 7.

⁸Comments of The Walt Disney Company, MM Docket No. 93-48 (filed May 7, 1993) at 3 [hereinafter cited as "•••"].

viewing choices. In short, they will quickly exit any program that does not hold their attention.⁹

Comments submitted on behalf of a number of station licensees point out similarly that "Children simply have too many choices available to endure programming which fails to entertain them."¹⁰ The observation of Dr. Frank Philpot (although admittedly out of its context) is no less compelling. Dr. Philpot states:

These children are not in the classroom. They are using television for entertainment and to effectively reach them we must work within the entertainment framework of commercial television, not outside it.¹¹

In short, the Commission appears perilously close to driving children away from broadcast television via stiff insistence on the primacy of explicit educational purpose in their efforts to serve the educational and informational needs of children.

Therefore, INTV urges the Commission to refrain from its proposal to modify the definition of programming considered responsive to the educational and informational needs of children.

II. SHORT-SEGMENT PROGRAMMING

Some commenting parties urge the Commission to discount or eliminate any credit for broadcast of short segment programming responsive

⁹••• at 6.

¹⁰Comments , MM Docket No. 93-48, filed May 7, 1993, by KBSD-TV *et al.*, at 12 [hereinafter cited as "KBSD"].

¹¹Reply Comments of Frank Allen Philpot, MM Docket No. 93-48 (filed May 24, 1993) at 5 [hereinafter cited as "Ph.d"].

to the educational and informational needs of children.¹² Such an approach is grossly inimical to the goals of the Act.

Ignoring or downplaying the effectiveness of short-segment programs contravenes what programmers know from experience in a competitive children's programming environment -- "the proven effectiveness of that format in promoting certain types of programming."¹³ Furthermore, as observed by Dr. Frank Philpot:

While it may be appropriate for the Commission to require some standard-length children's programming, I believe from my own experience, that children's audiences will be best served if licensees are allowed the freedom to fulfill a significant part of their obligation in this area through the use of short segments....

During the periods traditionally accepted as children's viewing times (especially on independent stations), children make their own choices and, in a marketplace where the majority of children have more than 30 channels to choose from, very few will choose to watch an educational or instructional program.

Certainly I know from my own experience as a parent that my children ignore the currently available instructional and educational programs on public television in favor of the cartoons, sitcoms and action adventure programs on commercial television. *Short segments are the only way to reach those children who do not consciously choose to watch educational programs.*¹⁴

Again, educational and informational programming is worthless unless children watch it. Short-segment programming is watched and should be

¹²SFP at 8; CME at 12.

¹³CTW at 14.

¹⁴Ph.D. at 3-4.

credited towards fulfillment of stations' programming obligations for

utilize the station's Kids Club hostess for greater program integration, have, on a daily basis in all children's time periods, dealt with the complete spectrum of issues, a wide range of educational disciplines, and environmental and social concerns. This approach allows WTTE to create high-quality, child-attractive segments which hold children's interest and to treat a far broader spectrum of issues than could be covered in a full-length program.¹⁷

In short, short-segment programming has been effective.

Third, short-segment programming is the perfect vehicle for local station efforts to produce programming which responds effectively to children's educational and informational needs. As stated by Associated Broadcasters, Inc., and Galloway Media, Inc.:

Use of short-segment programming also allows for greater localism in children's programming. Many local stations simply do not have the financial resources to be able to produce a regular, standard-length children's program. Those same stations might, however, have sufficient resources to produce educational and informational vignettes. In these vignettes, stations can feature local personalities, places, and events. Because such segments will focus on matters that are close to the child viewer's home, they are likelier to attract greater interest and attention. Clearly, programming that can attract and hold a child's interest is far more successful in conveying its educational or informational message than programming to which a child does not pay close attention. Further, local programming is better able to provide information about the portion of the child's world that is close at hand and readily accessible for exploration.¹⁸

¹⁷Comments of WTTE, Channel 28 Licensee, Inc., MM Docket No. 93-48 (filed May 7, 1993) at 4 [hereinafter cited as "WTTE"].

¹⁸Comments of Associated Broadcasters, Inc., and Galloway Media, Inc., MM Docket No. 93-48 (filed May 7, 1993) at 3-4.

Thus, denying or reducing credit for short-segment programming would discourage development of vital, responsive, quality local programming for children.

Therefore, INTV urges the Commission to continue to credit short-segment programming.

III. EXCESSIVE QUANTITATIVE STANDARDS

Several commenting parties have urged adoption of requirements or guidelines specifying substantial minimum quantities of programming responsive to the educational and informational needs of children.¹⁹

These proposals fail to appreciate that quantity might be legislated, but not quality. In fact, as quantitative expectations rise, qualitative performance will slump. As stated by Westinghouse Broadcasting Company:

If each broadcaster were forced to program a specific number of hours for kids each week, our children are likely to get a melange of low quality, low concept, low production-value, "schlock" programs, which they will refuse to watch....If these resources, instead, are put into a few excellent programs, kids will flock to them and get the education and information the Act anticipates.²⁰

Similar expectations were expressed by KBSD-TV *et al.*:

In reality the burden of minimum programming requirements may have the consequence of undermining quality, as

¹⁹See, e.g., CME at 16, 22 (one hour per day); AAP at 2 (one hour per day); Comments of the United States Catholic Conference, MM Docket No. 93-48 (filed May 7, 1993) at

broadcasters are forced to abandon expensive, high-quality offerings in order to acquire enough programming with their limited resources to meet the minimum standards. The burden may also result in bland uniformity....²¹

No purpose would be served by such a result.

Therefore, INTV reiterates its own proposal for a policy statement establishing a safe harbor for stations which satisfy a reasonable and flexible quantitative standard.

IV. THE CHILDREN'S TELEVISION MARKETPLACE

Some complain that "few new shows have been developed and aired."²² Much of the perceived shortfall in educational and informational children's programming, however, results from the Commission's premature "snapshot" of licensee performance. The programming production market had little on the shelf when the new requirements went into effect. Over time, the supply has increased, and it will continue to do so. As emphasized by Cannell Communications *et al.*:

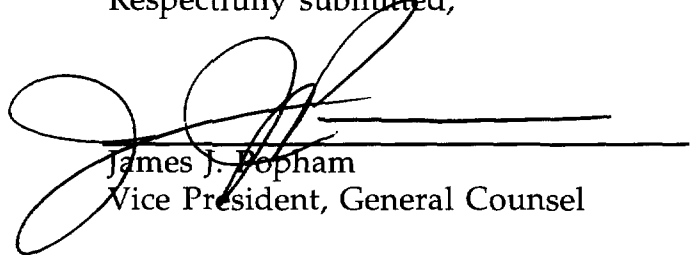
Although the availability of such programs continues to be

Similarly, Act III Broadcasting relates:

[I]n most markets, a number of broadcasters are bidding for these programs. Although there is more children's programming in development, broadcasters are as yet uncertain whether this

Commission's rules or policies which "restricts or restrains prior practices be applied prospectively" after proper notice and an opportunity for comment.²⁷

Respectfully submitted,



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²⁷Comments of Tribune Broadcasting Company, MM Docket No. 93-48 (filed May 7, 1993) at 16.